

MAY 26 2004

Submission of Federal Rules Under the Congressional Review Act

☐ President of the Senate

☒ Speaker of the House of Representatives

☐ GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

Department of Defense

2. Subdivision or Office

OUSD(AT&L)DPAP(DAR)

3. Rule Title

Multiyear Procurement Authority for Environmental Services for Military Installations

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)
DFARS Case 2003-D004

5. Major Rule ☐ Non-major Rule ☒

6. Final Rule ☒ Other ☐

7. With respect to this rule, did your agency solicit public comments? Yes ☒ No ☐ N/A ☐

8. Priority of Regulation (fill in one)

☒ Economically Significant; or
Significant; or
Substantive, Nonsignificant

☐ Routine and Frequent or
Informational/Administrative/Other
(Do not complete the other side of this form
if filled in above.)

9. Effective Date (if applicable) May 12, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached ☒ stated in rule ☐

Submitted by: Deidre A. Lee (signature)

MAY 03 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

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MAY 26 PM 3:10
SPEAKER'S ROOMS
U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2003-D004]

Defense Federal Acquisition Regulation Supplement;

**Multiyear Procurement Authority for Environmental Services for
Military Installations**

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2003. Section 827 authorizes DoD to enter into multiyear contracts for environmental remediation services for military installations.

EFFECTIVE DATE: *[Date of publication in Federal Register]*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; facsimile (703) 602-0350. Please cite DFARS Case 2003-D004.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 43332 on July 22,

2003, to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314). Section 827 amended 10 U.S.C. 2306c to provide authority for DoD to enter into multiyear contracts for environmental remediation services for military installations. Two sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. Comment: The interim rule is a major step forward for environmental remediation that can be accomplished within 5 years. However, the rule should provide for limited authority beyond 5 years where practicable and in the best interest of the Government.

DoD Response: The recommended change is not feasible, since 10 U.S.C. 2306c limits multiyear contracting authority for services to not more than 5 years.

2. Comment: DFARS 232.703-1(1)(iii), which addresses incremental funding, must be sustained and clarified to provide the ability to cash flow expensive remedial projects that cannot be fully funded within a single year appropriation.

DoD Response: No change to the incremental funding policy in DFARS 232.703-1(1)(iii) is necessary for implementation of this rule.

3. Comment: There is confusion within DoD as to what constitutes environmental services and environmental construction. DoD should clarify that all actions taken to

remediate contamination under the DERA program constitute environmental services.

DoD Response: The recommended clarification is outside the scope of this DFARS case.

4. Comment: The definition of "military installation" or the list in DFARS 217.171(a)(1)(v) should specifically include industrial property to remove any question as to whether the remediation services can be used at both active and former government-owned-contractor-operated industrial plants currently or previously owned by DoD.

DoD Response: The definition of "military installation" in DFARS 217.103 and the list in DFARS 217.171(a)(1)(v) are consistent with the provisions of 10 U.S.C. 2306c as amended by Section 827 of Public Law 107-314. The multiyear contracting authority provided by the rule applies to environmental remediation services that meet the criteria at DFARS 217.171(a)(1)(v).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because application of the rule is limited to contracts for environmental remediation services at military

installations or sites formerly used by DoD. Before using the multiyear contracting authority provided by the rule, the head of the agency must determine that certain conditions exist, to include a determination that use of a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor,

Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 217, which was published at 68 FR 43332 on July 22, 2003, is adopted as a final rule without change.